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State v. Barrett Respondent's Brief Dckt. 43235

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43235
Plaintiff-Respondent,)	
)	Bingham County Case No.
v.)	CR-2013-2576
)	
DAVID KEITH BARRETT,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Barrett failed to establish that the district court abused its discretion by relinquishing jurisdiction?

Barrett Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Barrett pled guilty to possession of methamphetamine and the district court imposed a unified sentence of seven years, with four years fixed, suspended the sentence, and placed Barrett on supervised probation for five years. (R., pp.95-103.) After Barrett violated his probation by being suspended from the Wood Pilot Project

program, the district court revoked his probation, ordered the underlying sentence executed, and retained jurisdiction. (R., pp.110-11, 139-41.) Following the period of retained jurisdiction, the district court relinquished jurisdiction. (R., pp.168-69.) Barrett filed a notice of appeal timely only from the district court's order relinquishing jurisdiction. (R., pp.171-73.)

Barrett asserts that the district court abused its discretion by relinquishing jurisdiction in light of his mental health issues. (Appellant's brief, pp.3-4.) Barrett has failed to establish an abuse of discretion.

"Probation is a matter left to the sound discretion of the court." I.C. § 19-2601(4). The decision to relinquish jurisdiction is a matter within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of that discretion. See State v. Hood, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); State v. Lee, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). A court's decision to relinquish jurisdiction will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate under I.C. § 19-2521. State v. Chapel, 107 Idaho 193, 194, 687 P.2d 583, 584 (Ct. App. 1984).

At the jurisdictional review hearing, the district court set forth in detail its reasons for relinquishing jurisdiction. (5/7/15 Tr., p.16, L.22 – p.21, L.11.) The state submits that Barrett has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the jurisdictional review hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm the district court's order relinquishing jurisdiction.

DATED this 22nd day of December, 2015.

/s/
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 22nd day of December, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

ANDREA W. REYNOLDS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

15

1 and is on board -- or is actually requesting the same as
2 the APSI in that the retained jurisdiction be
3 relinquished -- or that the Court relinquish
4 jurisdiction.

5 Your Honor, the very purpose of a retained
6 jurisdiction is to see if we can get an individual to
7 the point where they can successfully complete
8 probation.

9 Mr. Barrett has, in the past, when faced with
10 probation, not done well. He had three different
11 probation violations in his first felony, which led him
12 to a prison sentence.

13 Even in this case, during pretrial services,
14 we had issues with him showing up for drug testing. He
15 wasn't showing up for testing or Court. There was
16 certain issues that certainly happened.

17 I don't think -- and after having read this
18 report, it seems as though we haven't done anything for
19 Mr. Barrett. He has failed through this program. He
20 seems to not see the need or have a desire to change so
21 much. He -- gosh, he can't even ex- -- I can't find
22 another better word to explain it, except for his
23 behavior is just kind of that of a class clown. And he
24 wasn't taking that seriously -- this treatment.

25 I don't think that spending just a couple more

17

1 I've also gone back and looked. In this
2 particular case, he was ordered to participate in the
3 Wood Court. He was accepted in that court, and he was
4 terminated from that program for using spice, quitting
5 his job without permission -- that impulsivity may have
6 something to do with that; I don't know -- having an
7 unapproved relationship with another probationer and
8 being dishonest about it, and failing to make any
9 progress on his GED.

10 The issue is kind of directly tied into what
11 we're seeing being reported from the North Idaho
12 Correctional Institution.

13 Mr. Ricks has pointed out some paragraphs --
14 or sentences, rather, that the defendant disputes. And,
15 quite frankly, when -- the first on page 4 and 8, where
16 he states he wants to be -- excuse me -- that he denies
17 that, when he goes to medical, he tries to achieve
18 euphoric recall by managing his medications and getting
19 him high.

20 That wasn't a concern to me in reading through
21 the report in and of itself, and so I haven't put a
22 whole lot of weight on that anyway, even though he
23 disputes that.

24 He disputes, at least in part, that he did not
25 claim he wanted to be relinquished, as outlined on

16

1 months in the yard is going to change him to the point
2 where he can be successful on probation again. We're
3 going to get somebody back here who is going to continue
4 to violate probation, and then we're going to have an
5 issue.

6 And so the State would request that the Court
7 relinquish jurisdiction.

8 THE COURT: Mr. Ricks?

9 MR. RICKS: Your Honor, I guess the only thing
10 that I would have in response to that is I guess I'd
11 once again make it clear that we are not trying to claim
12 that his performance was perfect.

13 I think that one of the main concerns I have
14 is based even on the information in APSI -- is how much
15 of a barrier to his successful completion of that
16 program was his mental health and some of those issues
17 that were going on and, if the treatment of that had
18 been accomplished a little bit differently while he was
19 there, what the situation may be otherwise.

20 But, Your Honor, other than that, I have
21 nothing further.

22 THE COURT: All right. Well, this Court has
23 reviewed the report from the North Idaho Correctional
24 Institution giving Mr. Barrett's performance or lack of
25 performance, however you want to term it.

18

1 page 3, but claims that what is closely more related to
2 what happened is described on page 5 in that second full
3 paragraph, that he would rather quit the program than
4 feel the way he was than have nobody listen.

5 That statement there is not unequivocal, that
6 he wants to be relinquished. I can understand why they
7 may have interpreted it that way. But the statement on
8 page 3 -- obviously, somebody reported that part, but
9 it's in dispute.

10 There is no question that his mental health
11 issues have been in play not just since being in the
12 retained jurisdiction program but throughout probation
13 and is one of the reasons he was accepted into Wood
14 Court -- as well as the traumatic brain injury. But we
15 really don't know the overall impact on the whole
16 situation.

17 What is more concerning to me is that this, as
18 Mr. Brower indicated, is an opportunity for an
19 individual to go and begin programming to learn to
20 change the criminal thinking and the criminal behaviors
21 and deal with substance abuse, especially in the TC, to
22 deal with those issues so that they are prepared to be
23 in society and be able to conform with the societal
24 norms, meaning that they are prepared to obey the law
25 and follow the instructions that society deems that they

19

1 follow and, in particular, to follow instructions while
2 on probation for a period of time to ensure that they
3 continue to be reintegrated into society in such a
4 manner that they can obey the laws and not have any
5 further problems.

6 But in this case, there were issues dealing
7 with rule violations as well.

8 And one of the things that concerned this
9 Court in a significant manner is, although
10 Mr. Barrett -- or, Mr. Ricks, you're arguing that he's
11 made some progress, and I can't say that he hasn't made
12 some progress. But there's also other areas where it
13 looks like his progress has diminished.

14 And one of those areas is on page 3 in the
15 last full paragraph on that page, where, on December 8th
16 of 2014, Mr. Barrett stated that, if he was going to be
17 relinquished, he was going to take another offender with
18 him and smash him out.

19 That's a bigger concern to me, probably, than
20 anything -- is that mind-set. It might have been
21 impulsive to say. But it doesn't mean the feelings
22 aren't there, and it doesn't mean that, if not in a
23 controlled situation, he would have reacted on those
24 types of issues.

25 As has been pointed out on page 4, they were

21

1 to the other participants trying to make it through the
2 program.

3 In addition, it is clear that he is in no way
4 in a situation where he is prepared to be supervised in
5 the community on probation. He'd just be right back in
6 front of the Court looking at the same type of
7 consequences.

8 So given all of the circumstances, it is the
9 judgment of the Court at this point that the Court
10 should relinquish jurisdiction, and this Court will do
11 so.

12 Mr. Ricks, do you have anything further?

13 MR. RICKS: Not today, Your Honor.

14 THE COURT: All right. Mr. Brower, do you have
15 anything further?

16 MR. BROWER: No, Your Honor.

17 THE COURT: All right. Mr. Barrett, this Court
18 has signed an order relinquishing jurisdiction.

19 You do have 42 days in which to file an appeal
20 challenging that order. You have the right to be
21 represented by counsel on that appeal as well. If you
22 cannot afford counsel, counsel can be appointed to
23 represent you on that matter.

24 Do you understand that, sir?

25 THE DEFENDANT: You relinquished me?

20

1 having problems with his ongoing failure to get on top
2 of his behavior. The team management people staffed him
3 and, given all the circumstances, basically cut him
4 another break and said "Let's continue to work with him
5 and see what we can do."

6 And then when they reviewed his progress again
7 in January, they state that he continued to use his
8 emotional reasoning, continued to think out loud, did
9 not appear motivated to change his behaviors and
10 attitudes, and even made the statement that, by
11 Mr. Barrett's own admissions, has very little desire to
12 stop getting high. And he's frustrated that he faces
13 legal consequences.

14 And so when he's called out in his game by
15 family members that try to hold him accountable, he has
16 trouble with that as well.

17 Some of the same situations are repeated on
18 page 5.

19 And based upon my reading of that report, it
20 is clear to this Court that, even when applying the
21 objectives of criminal punishment and looking at the
22 factors and the objectives that the Court is required to
23 look at in a sentencing at disposition, it is clear that
24 at this point further programming in the rider program
25 is not beneficial and, quite frankly, is more disruptive

22

1 THE COURT: Yes, I did.

2 THE DEFENDANT: And I have a right to appeal?

3 THE COURT: You can appeal the relinquishment,
4 yes.

5 THE DEFENDANT: Okay. I didn't quite hear that.
6 I am relinquished or --

7 THE COURT: Yes, you are relinquished, and you do
8 have the right to appeal the decision.

9 THE DEFENDANT: Okay. Well, I would like to
10 appeal it.

11 THE COURT: Okay, Mr. Barrett.

12 You may want to contact, then, him regarding
13 that appeal.

14 MR. RICKS: I will work on contacting him,
15 Your Honor.

16 THE COURT: All right. Okay. If there's nothing
17 further, Court is adjourned.

18 (The hearing concluded at 2:41 P.M.)

19 -00000-